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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/644,380	08/23/2000	Floyd H. Chilton		1698

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EXAMINER	
JIANG, SHAOJIA A	
ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/644,380	Applicant(s) CHILTON, FLOYD H.	
	Examiner Shaojia A. Jiang	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-46 and 49-51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-46 and 49-51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

This Office Action is a response to Applicant's amendment and response filed on September 6, 2002 in Paper No. 11 wherein claims 1-2, 19-20, 25, 40 and 49 have been amended. It is noted that claims 47-48 are cancelled. Currently, claims 1-46 and 49-51 are pending in this application.

Applicant's remarks with respect to the objection of claim 26 made under 37 CFR 1.75 (c) for improper dependent for failing to further limit claim 26 of record stated in the Office Action dated April 9, 2002 have been fully considered and are found persuasive. Therefore, this objection is withdrawn.

Applicant's amendment filed on September 6, 2002 in Paper No. 11 with respect to the rejection of claims 8, 29, and 40-44 made under 35 U.S.C. 112 second paragraph for the use of the indefinite expressions and the trademark/trade name GLA, DGLA, SA, and EPA, of record stated in the Office Action dated April 9, 2002 have been fully considered and found persuasive. Therefore, the said rejection is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 16-17, and 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMichele et al. (5,223,285) for reasons of record stated in the Office Action dated April 9, 2002. Applicant's amendment adding the limitation to a specific ratio of GLA to EPA of 1:1 to 2:1 herein in claims 1-2 and 19-20 filed on September 6, 2002 in Paper No. 11 with respect to this rejection made under 35 U.S.C. 102(b) have been fully considered but are not deemed persuasive to render the claimed invention patentable over the prior art for the following reasons.

DeMichele et al. clearly discloses the specific amounts of GLA and EPA in a composition or a liquid nutritional product therein, i.e., GLA in most preferred range of 4.1-5.1% while EPA is in most preferred range of 4.5-5.5% (see col.13 Table 5 and col.22 lines 51-55 in claim 26. Therefore, one of ordinary skill in the art clearly recognized that the instant ratio of GLA to EPA, "about 1:1 to about 2:1" is anticipated by DeMichele et al. because, for example, the ratio of 4.5% of GLA to 4.5% of EPA is 1:1. See also abstract and claims 1-23.

Applicant's remarks that the '285 patent neither teaches nor suggests the subject matter of the claims have been fully considered but are not deemed persuasive. Again, it is well settled that "intended use" of a composition or product, e.g., for diminishing symptoms of inflammatory diorders, will not further limit claims drawn to a composition or product. See, e.g., In re Hack 114, USPQ 161, and *Ex parte Masham*, 2 USPQ2d 1647 (1987).

As discussed above and in the previous Office Action, DeMichele et al. anticipates claims 1, 3, 5, 16-17, and 19-22.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 4, 6-15, 18, 23-46, and 49-51 even though they are not anticipated by DeMichele et al. (5,223,285) as applicable to claims 1, 3, 5, 16-17, and 19-22, are rejected under 35 U.S.C. 103(a) as being unpatentable over DeMichele et al. (5,223,285) for reasons of record stated in the Office Action dated April 9, 2002. Applicant's amendment adding the limitation to a specific ratio of GLA to EPA of 1:1 to 2:1 herein in claims 1-2 and 19-20 filed on September 6, 2002 in Paper No. 11 with respect to this rejection made under 35 U.S.C. 102(b) have been fully considered but are not deemed persuasive to render the claimed invention nonobvious over the prior art as discussed below.

Applicant's remarks filed on September 6, 2002 in Paper No. 11 with respect to this rejection of claims 2, 4, 6-15, 18, 23-46, and 49-51 made under 35 U.S.C. 103(a) have been fully considered but are not deemed persuasive as to the nonobviousness of the claimed invention over the prior art as discussed above in the 102(b) rejection.

As discussed above and in the previous Office Action, the claimed invention is clearly obvious in view of the prior art.

Applicant's results in Examples herein of the specification at pages 33-46 have been fully considered with respect to the nonobviousness and/or unexpected results of the claimed invention but are not deemed persuasive for the following reasons. It is noted that merely one testing is performed in *vivo* (see Example 10). All these examples provide no clear and convincing evidence of nonobviousness or unexpected results for the composition herein over the prior art, especially no clear and convincing evidence for the specific ratio of actives as claimed herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art to demonstrate any unexpected results for the claimed invention.

Therefore, the evidence presented in specification herein is not seen to support the nonobviousness of the instant claimed invention over the prior art.

For the above stated reasons, said claims are properly rejected under 35 U.S.C. 102(b) and 103(a). Therefore, said rejections are adhered to.

In view of the rejections to the pending claims set forth above, no claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
November 25, 2002

SREENI PADMANABHAN
PRIMARY EXAMINER

SREENI PADMANABHAN
PRIMARY EXAMINER
12/1/02